IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision : October 5, 2007

CS(OS) No.1985/2006

M/s.Ambika Enterprises ..... PLAINTIFF
! Through: Mr.P.D. Gupta, Advocate

Vs.

$ Mr.Sanjay Aggarwal ……..DEFENDANT
^ Through: Nemo.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether the judgment should be reported in the Digest?

ANIL KUMAR, J. (Oral)
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1. This judgment shall dispose of plaintiff's suit for recovery of Rs.24,39,385/-, the amount of two dishonoured cheques for Rs.7,35,838.51 and Rs.13,35,766.62 totalling to Rs.20,71,605.13 and interest of Rs.3,66,780/-.

2. The contention of the plaintiff is that it is a registered partnership firm and having its office at 3996-A, Naya Bazar, Delhi and carries on business of purchase and sale of food grains including rice, pulses, etc.

3. The defendant is also carrying on business of food grains and rice under the name and style of M/s.S.A. Trading Company, having its office at 13-A, Block-U, Bindapur Matiala Road, Uttam Nagar, New Delhi-110059.

4. The plaintiff had been selling rice to the defendant and an account in the name of the defendant was opened and maintained in the books of account of the plaintiff and price of goods sold and delivered to the defendant used to be credited and the amounts received from the defendant used to be debited.

5. According to the plaintiff, on 8th October, 2005, a sum of Rs.20,71,605/- was due from the defendant to the plaintiff on account of balance price of goods sold and delivered to the defendant for which cheque No.993361 dated 21.10.2005 for Rs.7,35,838.51 and cheque No.133465 dated 21.10.2005 for Rs.13,35,766.62 were given to the plaintiff by the defendant. The said cheques when presented for encashment were, however, returned dishonoured on account of payment being stopped. According to the plaintiff, defendant represented that he will arrange payment for encashment of those dishonoured cheques, however, no payment has

been made. According to the plaintiff, other cheques were also given which have also been dishonoured.

6. On the representation of defendant, the said cheques were again presented for encashment, however, they were returned with the remarks "payment stopped by drawers and account closed". Consequent thereto, the plaintiff raised demands for payment of amounts due on account of dishonoured cheques by notice dated 18th February, 2006 and 15th April, 2006, however, the notices were returned with the remarks "refused". The notices sent by UPS have not been received back and are deemed to have been served.

7. Since, the amount of dishonoured cheques were not paid, the plaintiff filed the present suit under Order XXXVII Rule 1 of Code of Civil Procedure claiming an amount of Rs.20,71,605.13 on account of dishonoured cheques and Rs.3,66,780/- from 21st October, 2005 till the date of filing of the suit. The plaintiff has also claimed interest at the rate of 18% per annum.

8. The plaintiff has relied on the invoices issued to the defendant stipulating that interest will be charged @ 1.75% per month in the first month,

2.25% per month on the next month and 36% per annum after two months. The plaintiff, however, has claimed interest at the 18% per annum.

9. The summons of the suit under Order XXXVII were served on the defendant on 21st February, 2007 and the appearance in compliance of order XXXVII Rule 4 has not been filed.

10. The relief claimed by the plaintiff on the basis of dishonoured cheques is within the ambit and scope of Order 37 of Code of Civil Procedure and there is no other impediment in decreeing the suit on failure of the defendant in putting appearance pursuant to the summons served on the defendant under the appropriate form under Order 37.

11. Consequently, the averments made in the plaint are accepted to be correct and the defendant has become liable to pay a sum of Rs.20,71,605.13 on account of amount dishonoured cheques and an amount of Rs.3,66,780/- on account of interest from 21st October, 2005 till the date of filing of the suit.

12. The suit of plaintiff is, therefore, decreed, for a sum of Rs.24,39,385/-

with costs. The plaintiff shall also be entitled for simple interest @ 9% per annum from the date of institution of the suit till the realisation of the decreetal amount.

Decree sheet be drawn accordingly.

October 5, 2007. **ANIL KUMAR, J.**
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